

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 6, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Patte Newman, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor (Steve Duvall and Gerry Krieser absent); Kathleen Sellman, Ray Hill, Jason Reynolds, Brian Will, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held February 20, 2002. Carlson moved to approve the minutes, seconded by Newman and carried 5-0: Carlson, Newman, Schwinn, Steward and Bills-Strand voting 'yes'; Duvall, Krieser and Taylor absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

February 20, 2002

Members present: Carlson, Newman, Schwinn, Steward, Bills-Strand and Taylor; Duvall and Krieser absent.

The Consent agenda consisted of the following items: **FINAL PLAT NO. 01035, APPIAN WAY ADDITION; COUNTY COMPREHENSIVE PLAN CONFORMANCE NO. 02001; STREET AND ALLEY VACATION NO. 02001; WAIVER OF DESIGN STANDARDS NO. 02002; and MISCELLANEOUS NO. 02001.**

Item No. 1.4, Waiver of Design Standards No. 02002, was removed from the Consent Agenda and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Bills-Strand and carried 6-0: Carlson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'; Duvall and Krieser absent.

Note: This is final action on the Appian Way Addition Final Plat No. 01035, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

This is also final action on County Comprehensive Plan Conformance No. 02001, which is a permanent conservation easement on property generally located at N.W. 126th Street and Superior Street. There will be no further action on this application.

WAIVER OF DESIGN STANDARDS NO. 02002
TO WAIVE MINIMUM SUBDIVISION IMPROVEMENTS
ON PROPERTY GENERALLY LOCATED
AT NO. 67TH STREET AND SEWARD AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 6, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Staff recommendation: Approval.

This application was removed from the Consent Agenda and had separate public hearing at the request of the staff.

Mike DeKalb of Planning staff submitted a memorandum from Becky Horner, the project planner, requesting to add a condition of approval that the petitioner agrees to submit a formal paving petition for Seward Avenue if adjoining property owners request a paving district in the future.

The applicant did not testify but was present in the audience and agreed with the condition added by the staff.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

March 6, 2002

Carlson moved approval, with amendment adding Condition #1 as submitted by staff, seconded by Newman and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes'; Duvall and Krieser absent.

CHANGE OF ZONE NO. 3358
FROM H-4 GENERAL COMMERCIAL TO I-1 INDUSTRIAL
ON PROPERTY GENERALLY LOCATED
AT S.W. 6TH STREET AND WEST "A" STREET.

And

CHANGE OF ZONE NO. 3351
FROM H-4 GENERAL COMMERCIAL TO I-1 INDUSTRIAL
ON PROPERTY GENERALLY LOCATED
AT S.W. 5TH STREET AND WEST "A" STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 6, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Staff recommendation: Denial.

Proponents

1. **Bob Stephens**, the owner of the property at S.W. 6th and A Street appeared in support of Change of Zone No. 3358. He acknowledged the staff recommendation of denial but pointed out that the Health Dept. did not have any objections to this change of zone.

Steward recalled that the general discussion at the last hearing on Change of Zone No. 3351 was about a smaller parcel being left in H-4 than our normal circumstances required, so the Commission suggested the I-1 strategy with the additional property owned by Stephens, but now the staff report indicates concern for the adjacency of the I-1 and an R-2 across the street. The staff report also suggests another possible alternative, which is to leave a small R-2 strip as a buffer between the existing R-2 and the proposed I-1. Is this a strategy that you would support? Stephens stated that it is not what he would really like to see. He clarified at the map where the R-2 would be located. The property directly west of the most southern portion of the lots located at S.W. 6th and "A", across to the west, is not R-2. He assumes it would only be that portion adjacent. Stephens suggested that the buffer be something less than a 50' lot. A 50' lot would make it a buildable R-2 lot. Stephens believes the setback requirement for an R-2 lot is 50', so this would effectively leave a 100' buffer.

Stephens indicated that he did have discussion with the owner of the lot just north of his property, essentially at S.W. 6th and "B", and she did not object and her property has been included in this change of zone. Stephens also talked with the property owner of the other piece that is above and to the north of Von Busch's area. The rest of their ground is zoned I-1, so they would support this change. Everything surrounding this property is I-1 except the R-2 across the street to the west.

Carlson inquired about the proposed use for the property. Stephens does not have any immediate plans but he can see that this property would work well for something that would fit in I-1, such as office warehouse or something of that nature. It does have the "A" Street frontage. Yet the setback and parking requirements of the H-4 are less helpful than the I-1. Stephens has owned the property for 15 years and it sat there a long time before that.

2. Jake Von Busch, owner of property in Change of Zone No. 3351, stated that he has worked hard for this property and spent many years. The city never did anything to the property. There used to be a barn on the property with no running water and no electricity. He has spent a lot of money and time cleaning up the property and made it presentable to be able to do something with it. He has talked with all the neighbors and there is no one against this zoning and no one against him building there. The railroad is moving him out of his present location because of the "A" Street overpass; otherwise, he would not be moving. This H-4 is not acceptable because the requirement for 64 parking stalls and the 50' setback takes too much of his property just for setbacks. He needs I-1. Without the I-1 he will be struggling with the city to stay where he is at.

Von Busch stated that he will only have two buildings on this site--an office building and a storage building. He does not need 64 parking stalls. Von Busch will not sell his other property to the city until he gets something he can build upon.

Carlson noted that the property was changed in 1998 from B-2 to H-4 and he wondered whether Von Busch knew he would be building a building on this property at that time. Von Busch indicated that he did not know at that time. He didn't know when the city would make up their mind. He acknowledged that he bought the property as speculation and cleaned it up. Carlson wondered about plans showing what he is going to build. Von Busch has not submitted building plans but it will take a bigger part of the ground. The shop will be approximately 100' x 154', where he will store the trucks, and the office building will be approximately 75' x 50'. The property is not quite 3 acres. A 50' setback puts the building right in the middle of the lot and he will lose a lot of space.

3. Mark Hunzeker stated that the additional land was added to this change of zone at the suggestion of the Commission after the staff objected to leaving a small portion zoned to the west. This area is perfectly appropriate. The net result is going to be very little change other than to make the parcel, particularly the Von Busch parcel, usable for its proposed use. It's an area that has been historically zoned industrial; it is surrounded by industrial; and the impact of industrial zoning on these parcels is minimal at best.

Carlson noted that the staff's primary objection to Change of Zone No. 3351 is that the remaining H-4 doesn't make the minimum 5 acres, but it seems staff is indicating there could be 5 acres remaining. How close are we? Hunzeker suggested that if that is true, he is not

sure why the objection was made in the first place. The area to the north is clearly industrial; the area immediately to the south is a creek bottom that is likely to remain unused, regardless of how it is zoned; the area in the Stephens application (Change of Zone No. 3358) is largely vacant with the exception of the one house on the area just north of "B" Street, and it abuts industrial area as well.

There was no testimony in opposition.

Staff questions

Carlson referred to Change of Zone No. 3351 (the Von Busch property), and looking at the staff report, it looks like the substance of objection is that the H-4 is less than 5 acres. Can you show me on the map where we have the five acres? If Change of Zone No. 3351 were approved, how much is left over and how close to 5 acres is it? Brian Will of Planning staff referred to the map. The H-4 is approximately 7.5 acres. So the area shaded on the map is the substance of the Von Busch application. If that were changed to I-1, the total acres would be less than 5 acres (3.5 to 4 acres). That was the primary substance of the objection. The staff report mentions that it appears to make sense to rezone a good portion to I-1 as being consistent with the Comprehensive Plan, the surrounding zoning and the way development is occurring. However, there is R-2 to the west across 6th Street that the staff could not ignore in the analysis. Originally, prior to 1998, this parcel was all zoned B-2. Brian referred to the map showing the previous zoning in the area and explained the zoning history.

Carlson sought clarification that the staff is suggesting that if there is intensification of zoning going on, it is important to have a buffer. Will stated that there is a good case for rezoning a good portion of this property, but the problem with I-1 is that we have no use permit process and no protection or provision for mitigation with the adjacent R-2. One suggestion was to change a portion of the lots on the western portion to R-2 to provide some sort of a buffer for the residential uses to the west.

Carlson inquired whether there is any other zoning that would accommodate the needs here. Will indicated that the staff looked at the H-3 district, but the parking and setback standards were a problem.

Steward inquired about the alternative for a strip of R-2 on the west edge. He presumes that would be the northwest edge—it wouldn't need to come all the way down to "A" Street. Will stated that it would include only that part that abuts R-2. The setback requirement between that use in the I-1 and the R-2 district would be 20'. The staff was suggesting 50' because it would provide room for a landscape buffer, one drive aisle and one row of parking. Steward assumes that if it were a 20-25' strip of R-2, there would be adequate space for the buffer and some parking. Will concurred.

Schwinn observed that the alternative would only apply to two of the Stephens lots that would have the R-2 buffer. Will concurred and showed them on the map. There is a single family residence located in the existing H-4 zoning and it is under ownership other than Mr. Stephens. However, Mr. Stephens indicated that this owner is not opposed.

Response by the Applicant

Hunzeker suggested that if the Commission chooses to put a buffer along S.W. 6th Street, it would be an extraordinary amount of effort for very little substance in order to require a special permit for parking on half of that 50' buffer. You have 25' setback in R-2; you would not be permitted to park within that 25' setback, so you would be faced with the situation of processing a specific and special permit application for the 25' strip in order to take advantage of the reduced setback. You could reach that same result by using some sort of strip of residential land with a 10' strip of residential on the east side of S.W. 6th. Combined with the sideyard setback of 15' when it abuts residential, you get a 25' landscaped area within which no parking could take place and you reach the same result. It does not make sense to extend the residential strip into the area where the nonconforming house sits because it already abuts industrial and is already nonconforming and will be nonconforming as I-1, and the owner has no objection.

But, Steward pointed out that the question on the northwest corner block is not the nonconforming house—it's the zone across the street. Hunzeker agreed. If you kept the 10' strip along the east side of S.W. 6th, he believes it would accomplish the same result as a 50' strip with the special permit. There is a requirement for a landscape screen which is a more opaque screen than a parking lot screen between incompatible land use districts. So between an R-2 and an I-1, there is a requirement that you have a landscape screen that would probably be more than what is ordinarily required in front of a parking lot.

Schwinn noted that if the applications are approved as submitted, the industrial would still have 15' setback on S.W. 6th. Hunzeker added that it would have a setback on all street sides. It would not have a front yard setback along S.W. 6th. The setback would be 15' but it would be measured from the zoning district line and would be a sideyard requirement. If you went with a 50' buffer, you effectively create a buildable residential lot that faces both "B" Street and "A" Street, which is more of a problem than it is worth.

Schwinn inquired whether the zoning could be split on a lot. Will clarified that the staff is referring to those lots immediately adjacent to S.W. 6th Street on the east side. He indicated that it is possible to split the zoning on the lot.

Bills-Strand believes we have the same situation in Bishops Heights, where there is a strip of residential as the buffer. Will concurred. That one is 150'. This similar tactic was used at Lincoln Plating to the north.

Carlson inquired whether the application has been advertised properly if the Commission chooses to include some R-2 buffer zoning. Will stated that there are four owners involved. If we are talking about a buffer strip to R-2, we would have to readvertise. That was not part of the original applications.

Schwinn believes that Hunzeker is asking for a 10' strip to give an effective 25' setback along S.W. 6th. Will believes the staff could support what has been discussed today with a two-week delay. Hunzeker is not sure he understands why we have problem with legal descriptions. Will indicated that the portions of the IMS subdivision to the north have not been described. The Planning Department has developed a rough description for the purpose of this application; however, it will be necessary to have a metes and bounds description by the time it goes to City Council.

Taylor moved to defer for two weeks, with continued public hearing and administrative action on March 20, 2002, seconded by Carlson and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes'; Duvall and Krieser absent.

SPECIAL PERMIT NO. 1913,
HERITAGE LAKES COMMUNITY UNIT PLAN
and
PRELIMINARY PLAT NO. 01004,
HERITAGE LAKES,
ON PROPERTY GENERALLY LOCATED
AT SO. 98TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 6, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Staff recommendation: Conditional approval.

Jason Reynolds of Planning staff submitted a letter from the Army Corps of Engineers stating that the applicant will need their authority prior to project activities. Reynolds added Site Specific Condition #3 to the preliminary plat that the applicant shall receive an Army Corps of Engineers permit prior to project activities.

Proponents

1. Jack Lynch of Olsson Associates, presented the project. Heritage Lakes is a residential community of a little over 50 acres, with about 100 single family lots and 26 townhouse lots. It sits just north of a 20-25 acre lake that is currently under construction. This is part of the northeast quadrant of the Eiger Development approved previously (the large 600 acre complex at the intersection of Hwy 2 and 84th Street). The proposal consists of a number of single family lots. Between the two cul-de-sacs there is a series of cascading ponds and streams that will be enhanced with wetland habitation. These are being built and will consist of recirculating water to cascade water down those ponds and streams to the bottom and pump back up to the top. Both also function as stormwater area. This project is at the southwest quadrant of Pine Lake Road and 98th Street. The intent is to begin development this spring and summer.

Lynch agreed with the staff report with the exception of Condition #1.1.1 and Condition #1.1.2 of the community unit. He requested that these two conditions be deleted. Condition #1.1.2 requires a connection and creates a four-way intersection. The developer's preference is to create a small residential neighborhood with townhouses and the cul-de-sac is well within design standards. That four-way intersection would sit less than 200' off of Pine Lake Road, so there are safety issues. Plus, if we create that four-way intersection, they would not be able to meet the design standards coming to the west for that curve and the intersection to that roadway. Lynch also observed that over the years, developers have consistently been directed to avoid four-way intersections in this community.

Lynch then addressed Condition #1.1.1 of the community unit plan which requires moving a street and the single family attached units to the east for less encroachment upon the wetlands. Lynch stated that the developer has gone through an extensive delineation program for the entire Eiger property; they have done an extensive mitigation plan; and they have an approved 404 permit for this entire project. The issue here is two wetlands. One of them was originally declared to be impacted so they agreed to mitigate elsewhere. If they move the cul-de-sac they will run into the problems with grade. That wetland is being mitigated somewhere else. With regard to the other wetland, the more pristine part is being saved. They are also mitigating these wetlands elsewhere on the site.

2. Joan Darling of Olsson Associates confirmed that the developer does have a section 404 permit for the impacts of this project. It was permitted under the Eiger Corporation as opposed to Heritage Lakes. It had gone through a public notice period and has had agency approval. The Army Corps of Engineers has approved the impacts that will be done here and the mitigation plan. Darling discussed the quality of the areas that are being impacted. One was an old farm pond and the dam broke. It is a very silty bottom and there is no aesthetic or high functioning in terms of wetland values. If avoided entirely it would still be a low functioning

wetland and would not be attractive as a back yard feature. The regulatory agencies agree that this could be mitigated. The diverse mix of natural habitats that will be created in the green space will have much higher functions than this wetland does now.

The other wetland in the northwestern part of the site is a fairly large complex with two arms. The developer has made every effort to save the best part of that wetland. The western part is a fairly high quality wetland with good water quality. It has mature trees and has wetland values that are worth keeping. They have made efforts to minimize the impacts on that wetland.

From what Steward understands about engineering, he believes one can engineer protection of anything, and you can control field conditions if it is approved and engineered. Lynch's response was what they can't control are the builders. And, Steward added that the weakness of the protection character within the city cannot be controlled by the developer. Steward recommends that we not begin assuming the worst. It is better to assume the natural protection and then work with it as the project goes. Steward understands the logic of that pond that has developed and he would consider it a manmade wetland that can probably be more effective in the outlot if landscaped appropriately. But the other seems to be much more significant. Steward inquired whether the developer has any issue with what is being required to protect the one on the west. Lynch stated that they are protecting that one adequately.

Steward believes that Condition #1.1.1 moves the cul-de-sac so that that southern wetland would be more protected. Lynch stated that there is no room to move the townhouses further east. If they are going to connect roads and make that four-way intersection, they are impacting those same wetlands. Topography to the west of the line of townhouses starts to slope 2:5 to 3:1. Condition #1.1.1 will result in a landscape issue.

Schwinn asked Lynch to address the letter from the Army Corps of Engineers. Lynch stated that the approved permit is under the Eiger Development so when the Corps got the packet from the city referencing Heritage Lakes, nobody made the connection. He does not disagree with this being a condition of approval, however.

Steward noted that in the written responses in the staff report, there was a question about sidewalks on one side of the private roadway. Lynch has no problem with going to dual sidewalks. As part of the cul-de-sac issue, they will make sidewalk connections and the water main will be connected, but we would prefer not to make a roadway connection.

There was no testimony in opposition.

Staff questions

Carlson asked staff to describe what the Comprehensive Plan subarea plan says happens in this area. Reynolds stated that it is designated as SR-Special Residential which could be multi-family and other uses permitted in residential by special permit.

Carlson believes they are going to need street connections to 91st and Heritage. Reynolds clarified that they will have a street connection off of Heritage Lakes Drive.

Carlson asked staff to address Condition #1.1.2. Reynolds explained that this condition requires that So. 94th Court be connected south of the existing wetlands so it would be connected somewhere along the curve south of the existing wetland. This would not create a four-way intersection. The idea is to keep So. 94th south of the wetlands. The townhomes would have to be shifted around to accommodate the new design.

It was clarified that Condition #1.1.2 should read, "Connect S. 94th Court to Glass Ridge Drive, as opposed to Fischer Drive.

Response by the Applicant

With regard to Condition #1.1.2, Lynch pointed out that this will result in Lot #1 of the single family lots having three roads on all three sides, plus the northerly townhouses will still have to have a street. The idea of those 26 townhouses on one cul-de-sac is a small ideal neighborhood. They are not conflicting with single family traffic of the project; they create their own identity; plus coming off of Pine Lake Road there would be three intersections in a span of about 300-400 feet. Lynch does not feel they need to have that additional access.

Public hearing was closed.

SPECIAL PERMIT NO. 1913

HERITAGE LAKES COMMUNITY UNIT PLAN

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

March 6, 2002

Steward moved to approve the staff recommendation, with amendment deleting Condition #1.1.1 and Condition #1.1.2, seconded by Newman.

Steward believes there is technical logic behind the staff recommendation, but the practical circumstance that he understands from the description of the lay of the land and the character of the wetlands, the layout of this townhouse strip makes good sense. He believes we would end up with more confusion in a traffic pattern that had intersecting roadways about every 200-300 feet.

Schwinn observed that if So. 94th were built with just a spur out as a future to Glass Ridge Drive, we would have all 26 of those people down here complaining when we wanted to finish it. He thinks the applicant is correct in trying to do this.

Newman wondered whether we need to require a pedestrian easement without that connection. Schwinn believes they will put that easement in if the neighborhood wants it.

Motion for conditional approval, with amendment deleting Condition #1.1.1 and Condition #1.1.2 carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes'; Krieser and Duvall absent.

PRELIMINARY PLAT NO. 01004

HERITAGE LAKES

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

March 6, 2002

Bills-Strand moved to approve the staff recommendation of conditional approval, with the additional Condition #3 regarding the Army Corps of Engineers requirement as suggested by staff, seconded by Steward and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes'; Krieser and Duvall absent.

CHANGE OF ZONE NO. 3350

and

CHANGE OF ZONE NO. 3352

A TEXT AMENDMENT TO TITLE 27

**REGARDING THE STORAGE OF AUTOS FOR
SALE IN THE FRONT YARD SETBACK IN THE
H-2, H-3 AND I-2 ZONING DISTRICTS.**

CONTINUED PUBLIC HEARING BEFORE PLANNING COMMISSION: March 6, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Proponents

1. Brian Will of Planning staff submitted a memo from the Building & Safety Department in response to questions raised by Patte Newman regarding the properties that will be affected by this change and how the ordinance will be enforced.

If this ordinance is approved, it is Steward's understanding that any used or new automotive company in the entire city will be able to reduce whatever was their legal circumstance before

down to 6'. Will acknowledged that to be true, unless they have a previously approved special permit. As far as the ones that are in our vision, Steward suggested that it would only be a few that would not be affected. Will concurred.

Will went on to state that at the last hearing, the staff had asked for some additional time to continue working with the applicant for Change of Zone No. 3352. The original direction from the City Council was to develop some alternatives to accomplish the conditional use and develop some sort of standards that would be agreeable to both the city and the applicant for Change of Zone No. 3352. In the interim, the staff and the proponents for Change of Zone No. 3352 have reached agreement, which is the revised proposal for Change of Zone No. 3350. In general terms, the real point of contention between the city's proposed amendment and that of the applicant for Change of Zone No. 3352, was the amount of setback from the property line dedicated to landscaping. Originally, when staff started working on developing the amendment, the first proposal contained a setback of 5'. In going through the process of reviewing that amendment, that proposal was amended to allow parking in the rear half of the front yard, resulting in a 15' setback. Staff then met with the affected property owners, which has resulted in the amendment being proposed today whereby the setback is a 6' buffer from the front property line dedicated to landscaping. The other two changes are changes merely to clarify the standards for landscape materials.

Will also stated that the staff proposes to delete the I-2 district from the proposal as a conditional use. It was merely left in because it had been advertised and included in previous amendments to the staff report. The reason the I-2 should be deleted is that the required setback in I-2 is 25', so this would have no bearing or change on the I-2, and there is a minimal number of properties around the city that would be affected. This boils down to the H-2 and H-3 districts as a conditional use.

Carlson confirmed that there is now an existing condition of a 30' setback with no parking. Will acknowledged that the provision in the H-3 ordinance is 30'; however, parking in the front yard is allowed with a special permit. Carlson sought then to clarify that the staff proposal suggested 15' and now the compromise is 6'. Will concurred.

2. Bill Austin of Erickson & Sederstrom appeared on behalf of the applicants for Change of Zone No. 3352. He expressed concurrence with the compromise that has been reached on Change of Zone No. 3350. He clarified that this has no effect on any car dealer that is currently, or in the future, located in the B-1, B-2, B-3 or B-4, H-1 or H-4, and once finally amended it will have no effect on a car located in I-1 or I-2. It is limited to those districts that are intended for high visibility uses.

With regard to the 6' compromise, Austin advised the Commission one of the things that drove the compromise was how much the setback should be in light of what the city is currently considering as corridor protection for entryways to the cities. It is his understanding that the

city is looking at something that would require a 6' setback. To be consistent and in anticipation of that type of regulation for entryways, Austin has agreed that 6' would be appropriate. There are significant provisions regarding the landscaping of that area to assure that this will be an effective use of the property in these districts. Austin fully agreed with the compromise and expressed appreciation to the administration for the willingness to work this out.

For the record, in light of the revisions made to Change of Zone No. 3350, William Austin formally withdrew Change of Zone No. 3352. He also submitted letters from the West O Area Business Association and the Nebraska Independent Auto Dealers Association in support of the compromise.

3. Karl Jensvold, 650 West "O" Street, current president of the West "O" Area Business Association, appeared in support of the compromise. The Association consists of 61 members. They voted on this legislation with 22 members present, 6 being car dealers, with unanimous vote in support. The most productive part of this process was the opportunity to meet with the city staff to work through this legislation. 6' was not just pulled out of the hat. It was discussed fully. The landscape requirements will fall in line with the West "O" beautification project.

Opposition

1. Ron Sisel, 1010 West "P" Street, testified in opposition and submitted his testimony in writing. He believes that this concession was achieved by a coordinated mass violation by auto dealers of existing city codes and statutes in the face of public well-being and safety. It was a concession that was orchestrated to take place just weeks before modern design standards could emerge from the pipeline of city agencies and have a positive effect on our major urban transportation corridors. The 30' setback is space allowed for the public's safety of movement, aesthetic well-being of all and many yet unknown future needs. Endless rows of bumpers are not a new form of urban beautification. This action dumps another layer of visual blight on these older areas. Auto lots should no longer be allowed to victimize those within the 300 yard range of their 1000 watt, metal halide, whitest of white, uncontrolled glaring luminaries. This action does not deserve any support.

2. Craig Groat, recited from Standard & Poors rating about quality of life. It is irresponsible to make these changes as proposed. These regulations were made when we had responsible members of this business community. As the office economy has risen the industrial economy has fallen. In order to encourage quality companies to come to Lincoln, the last thing we want to do is hurt our aesthetics. He also recited from the AICP/APA Ethical Principles in Planning regarding serving the public interests and conserving the heritage of the built environment. The city is unable to enforce many of the regulations, including Weed Control; however, the regulations can be upheld in a court of law. Aesthetics do relate to

public health, safety and welfare. There is judicial recognition that aesthetic zoning can be reasonable and valid. Aesthetic considerations alone may warrant an exercise of police power.

Groat called for the appointment of an aesthetics commission or community beautification advisory commission be put into effect before anything like this is even considered.

Groat believes that this city has absolutely refused to enforce the parking regulations in the parking lot next to him. He has made repeated complaints. You wouldn't let your child use the excuse of everyone else is doing it, and these car dealers should not be allowed to do the same. He displayed photographs from Atlanta as an example of what you can have with aesthetic regulations. He also showed photographs of auto dealer businesses along West "O" Street, East "O" Street and Cornhusker Highway.

It would be grossly irresponsible to pass this legislation and would be in direct violation of the Code of Ethics.

3. Walt Hutchison, owner of **Popeye's Chicken**, testified in opposition. When Mr. Cornell (Red Star Auto) came to talk to him the first time, they discussed the situation on parking and he thought they got along well. Hutchison believes that there should be an access road because that is what they had agreed upon and the Popeye's Chicken building was set back. Cornell did not want to do that and Hutchison's attorney said he had to maintain a 30' setback. He is fearful that there will be car lots on both sides of his business. It would put Popeye's in the middle of a car lot. Hutchison submitted a copy of the drawing that Cornell submitted to the city for building permit approval in which Cornell agreed to the 30' setback. Now, he's protesting and he is the person that brought this all up. Now, this 30' becomes 6'. He also showed a photograph of the fence Cornell installed that obliterates the Popeye's sign. He displayed a picture of Car Hop which maintains the 30' setback.

Hutchison pleaded with the Commission because his family has invested everything they have in Popeye's. It took them 17 years to make it profitable. If 15% of Popeye's business is taken away because their visibility goes away, Hutchison and his family go back to nothing. He believes he could live with 15', but 6' is nothing. This has been a railroad job from the beginning. He was a member and vice-president of the West "O" Area Business Association and he was there the day all the car dealers showed up with their membership fee and they were there to eliminate the setback. At the next meeting, all of the officers were voted out and they put in all their own people. A lot of the projects that were planned for West "O" have gone away and will not happen because of this change.

Groat added that this is a federal highway and he believes there may be a federal regulations against this.

Staff questions

Steward asked Mike Merwick, the Director of Building & Safety, to clarify the memo indicating the impact on the existing other properties and Building & Safety's intent or interpretation of enforcement circumstances. Steward noted that throughout the several hearings the Commission has had, there have been comments made that even though we have standards they are not well enforced. If this is H-2 and H-3 primarily, to what extent throughout the city are we actually creating worse conditions than we have from existing businesses? Merwick stated that the Building & Safety Department responds to complaints as they get them. If this ordinance is passed, the Building & Safety Department would propose to go to the businesses that are affected and work with them to get compliance. Once they are in compliance, Building & Safety will work with them on a complaint basis in the future.

Steward commented that there might be some dealers that were so far out of compliance that a 6' setback might be an improvement. Merwick concurred. Steward believes the reverse could also be the case. Merwick concurred with that as well.

Steward asked staff to respond to the order of magnitude of impact of this ordinance within the city. Will stated that the staff has not done a count. Generally, the understanding is that there are more car lots that don't meet the current standard or don't have the setback than have landscaping in excess of what is being required. But, Steward suggested that many of those might not be in an H-2 or H-3 zoning district. Will concurred, and those would not be impacted. Steward wants an impression of what the H-2 and H-3 impacts. Will stated that in general terms, the impact would not be that great. He is not aware of that many properties that have landscaping in excess of what would be required.

Schwinn inquired about the open hoods, doors and trunks. Will explained that if the cars are parked within the required yard in H-2 and H-3 as a conditional use, the hoods, trunks and doors would not be allowed to be open. The hoods are allowed to be open if the cars are parked 30' back.

Newman inquired about lighting requirements. Will indicated that the city design standards do have lighting standards; however, this is not treated as a parking lot and the lighting standards do not apply. Newman believes this would be a good place to also regulate the kind of lighting that they would be allowed to have. Will agreed but the staff had not identified that as a need that should be addressed. Schwinn pointed out that the lighting requirements have been conditions of special permits but this change takes away the special permit process.

Bill Austin addressed the comments about the composition of the West "O" Area Business Association. This is a group that consists of 61 members, only 9 of whom are used car dealers. At their last meeting, 22 members showed up, 4 of whom were used car dealers,

and they voted to approve this compromise. This is not a group composed of only used car dealers. It is a responsible group of individuals interested in West "O" Street. As for as the use of Association funds for attorney fees, Austin stated that it would have to be an attorney other than he because his fee is not coming from the Business Association. As to the pictures that were shown by the opposition (Mr. Hutchison), Austin suggested that those pictures have nothing to do with what goes on in highway and industrial districts. The pictures did not designate the zoning district that is in place. With regard to the fence referred to by Hutchison, that fence was put up for a number of reasons, but it is a perfectly legal fence. It is exactly what is permitted in that district. But with this compromise, that fence will be removed from the front yard. In addition, Austin pointed out that these dealers will still be 34' back from the traveled portion of the road. There is a 28' wide right-of-way on West "O" Street, in addition to the 6' front yard setback. It will provide enough visibility for the abutting property owner who would have been subjected to obstructions in any event, and to a greater extent if the businesses had elected to use the property for other uses where they could have put in a parking lot or used the area for customer parking.

Austin believes this is a reasonable compromise and has been a give and take.

Public hearing was closed.

CHANGE OF ZONE NO. 3350**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 6, 2002

Carlson moved to approve the revised staff recommendation, with amendment for "one-half of the front yard setback" (12.5' to 15') as opposed to 6'. This changes it back to the previous staff recommendation. The motion was seconded by Newman.

Newman made a motion to amend to include the parking lot lighting design standards, seconded by Steward and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes'; Krieser and Duvall absent.

Steward stated that he will vote against the main motion. He believes this is an improvement, but he is more concerned about a) the precedent, and b) the fact that we are losing the special permit capability to deal with adjacencies and other incompatible uses or other dissimilar zoning, i.e. residential. Almost every one of these areas in town are adjacent to residential areas. He does not like the idea that we are restricted in our corridor entryway conditions. A 6' setback is minimal. He is opposed to the entire premise. It's H-2 and H-3, and there may be only a few properties affected, but he can guarantee that anyone in another commercial use zone will be right in here in front of us asking for the same setback privilege. He does not believe it is a good aesthetic decision.

Carlson acknowledged that this is an issue with competing interests. He is not disagreeing with anything Steward mentioned. Eliminating the special permit provides additional protections, and there may be rationale for reducing the setback from 30', but he knows reducing it to 6' is not the answer. Maybe 15' or one-half of the front yard is a compromise, but 6' is not.

Newman agreed with Steward. We do not know what we're dealing with and we don't know what the numbers are. We are creating an ordinance for a number of people that we can't even put a finger on. She is happy to deny this at this time. One of her original concerns was actual frontage of a lot. In a situation like Popeye's, there needs to be a sight distance where you can see all the things that you need to see, and she does not see it reflected here.

Schwinn has real mixed feelings. On one hand he feels like if your customers can park there, you probably should be able to park the cars for sale. But he thinks about Mid City Toyota who was in H-1 for 30 years--they never parked closer than the setback, were always in compliance and never had a shortage of buyers. He likes the addition of the lighting standards. When in compliance, Red Star Auto is probably one of the nicer looking auto dealers on O Street. Schwinn is also not sure the Popeye's sign is that important. He will vote in favor but he is not completely convinced.

Taylor agreed with Steward. He has had problems with this and was going to go along with it at first, but he agrees with Steward's comments.

Motion for approval, with amendment from 6' to "one-half of the front yard setback" and with amendment adding lighting standards, failed 2-4: Carlson and Schwinn voting 'yes'; Steward, Bills-Strand, Newman and Taylor voting 'no'; Duvall and Krieser absent.

Steward moved to deny, seconded by Newman and carried 5-1: Steward, Carlson, Bills-Strand, Taylor and Newman voting 'yes'; Schwinn voting 'no'; Duvall and Krieser absent.

CHANGE OF ZONE NO. 3352:

March 6, 2002

Application verbally withdrawn by the William Austin on behalf of the applicant during public hearing.

ANNEXATION NO. 01008;

CHANGE OF ZONE NO. 3195;

CHANGE OF ZONE NO. 3253;

and

USE PERMIT NO. 133

ON PROPERTY GENERALLY LOCATED

AT SOUTH CODDINGTON AVENUE

AND WEST VAN DORN STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 6, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Jason Reynolds of Planning staff submitted a written request from Kent Seacrest for an additional four-week deferral.

Carlson moved to defer, with continued public hearing and administrative action scheduled for April 3, 2002, seconded by Bills-Strand and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes; Duvall and Krieser absent.

There was no public testimony.

ANNEXATION NO. 01007,

TO ANNEX PROPERTY GENERALLY

LOCATED AT SO. 56TH STREET AND UNION HILL ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 6, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Jason Reynolds of Planning staff advised that this item should continue to be deferred for another two weeks. The City Attorney is drafting an annexation agreement and the applicant needs to work with city staff regarding the dollar amounts for city subsidy.

Bills-Strand moved to defer for two weeks, with continued public hearing and administrative action scheduled for March 20, 2002, seconded by Newman and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting 'yes; Duvall and Krieser absent.

WAIVER OF DESIGN STANDARDS NO. 02001
TO WAIVE STREET PAVING, SIDEWALKS, STORM
SEWERS AND STREET TREES, ON PROPERTY
GENERALLY LOCATED AT
WEST M STREET AND SO. CODDINGTON AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 20, 2002

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Proponents

1. Rick Onnen of Engineering Design Consultants presented the application. Since the last meeting, the applicant met with staff and discussed some options on how to deal with this. However, Onnen renewed the request to waive these minimum improvements, or at least address them separately.

Onnen reminded the Commission that Coddington Avenue currently dead-ends at the railroad yard. There was some talk at the last meeting about comparing that to S.W. 20th, which is one block to the east. S.W. 20th extends into the rail yard and that is a paved street, but it does continue on. The right-of-way for S.W. 20th also extends through the rail yard on the plat but Coddington Avenue does not. This is a dead-end street and is not going to go anywhere in the foreseeable future. The street is a 22' wide concrete rural section with ditches and very adequate for the traffic that it sees. Onnen does not foresee a lot more traffic based on what they are trying to do with this administrative final plat. S.W. 20th is 33' wide paving. There are no sidewalks and no street trees. There are a couple of residences that front on this street as well.

Onnen explained that the property is currently one I.T. lot and the applicant is looking to subdivide it into four lots. The south portion contains some storage units and the owner has a purchase agreement to sell that portion of the property and wants to retain the rest. The conditions of that subdivision require these improvements. The property is all under one zoning district.

There was no testimony in opposition.

Staff questions

Tom Cajka of Planning staff explained that the staff did meet with the applicant. This application comes forward as the result of an administrative final plat whereby the subdivision requirements go into effect. The subdivider is asking to waive those minimum improvements. The City has suggested that the subdivider could post the bonds now and still continue with

their request for the waivers. In issuing the surety amounts for paving, we looked at doing half of Coddington instead of requiring them to pave the entire width. We anticipate potential future development in the vacant area to the west, thus the staff would recommend that this area should be improved and the waivers should not be granted. The paving and storm sewer are not required to be constructed for two years, and the sidewalks and street trees are not required to be installed for four years. Thus, the bonds could be posted now, and if the district has not been created after the time period lapsed, we could reconsider the waiver at that time. Cajka also suggested that the city may require paving only to the entrance of the last lot on the south, and possibly could reevaluate it if that entrance was moved to the north without any other entrances.

Steward clarified that the staff continues to recommend denial of all of the waivers. Cajka concurred.

Bills-Strand inquired as to the rationale for the need for sidewalks and street trees. Cajka stated that it is a subdivision requirement and just because it is zoned industrial does not mean there would be no pedestrians. We do not want to require the pedestrians to walk in the street.

Taylor noted that the applicant mentioned another similar type area that was paved without sidewalks and he wondered whether that zoning was the same as this property. Cajka indicated that the zoning is the same. S.W. 20th is one block to the east. Taylor inquired as to why we would require sidewalks on one street and not on the other. Cajka did not know the history of how S.W. 20th was developed. In researching this application, he did not come across any subdivision that required that to be put in. Dennis Bartels of Public Works believes that the lots on S.W. 20th Street predate the requirement of the subdivision ordinance for sidewalks. We typically don't build the sidewalks with the paving district. Taylor asked Bartels about the reason or logic for the sidewalk. Bartels stated that it is a requirement of the subdivision ordinance and they could develop any use allowed by I-1 zoning.

Response by the Applicant

Onnen advised that Coddington Avenue between O and the railroad yard is a rural section the entire distance. The frontage that this applicant has only constitutes half of that on one side. If we wanted to improve Coddington on the south end to an urban section, we've got rural ditches draining into an urban street. The logical way to treat that would be to treat the entire piece from O to the railroad yard as a single district. The adjacent property owners do not support improving that roadway. In order to handle drainage it really needs to be taken care of as a package and not by just addressing the frontage along this piece of property.

Steward believes that the applicant is proposing to increase the intensity of the use of the property over what it is now through development. This subdivider also owns all of the

westernmost piece of the property and it would seem that this street becomes important to the potential uses both of the smaller piece and potentially the larger piece. Steward believes the city is perfectly within its right to ask for these improvements under that increased intensity of use. Onnen understands, but the subdivider still does not control the area along Coddington between their property and "O" Street. But, Steward believes those properties may also be influenced by what this applicant is capable of doing. The potential change of use is real to the north because of what this applicant may or may not do. Onnen understood, but they would still have to be assessed in order to complete the district. That's the hurdle we're dealing with.

Steward asked whether the applicant would have a better circumstance if they did not have to do street trees and sidewalks, except on one side. Onnen agreed that would be an improvement but they would still like all of the waivers. There are other cost implications such as an overhead power line that would have to be relocated adding to the cost of the project.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

March 6, 2002

Steward moved to waive street trees and sidewalks on one side, keeping all other improvements in place, seconded by Newman. Cajka clarified that the subdivision ordinance only requires sidewalks and street trees on their side of Coddington. After further discussion, Steward amended his motion to waive only the street trees because he is interested in seeing the sidewalk on one side of the street. Newman, who had seconded the original motion accepted the amendment.

Schwinn inquired of staff as to how long it is before the bond is released if the city chooses not to pave the street. Cajka stated that they have two years to do the improvements. Bartels clarified that he is not in favor of paving the 300' of street in front of this applicant's property if it is not paved on to "O" Street. The bond that Public Works is requesting is for their half of the street. The standard subdivision requirement is 2 years. Bartels assumes that if a district was pursued in those two years and nothing happened, that would give reason to ask for it to be waived but they could come back and ask for a waiver at that time and get their bond released at the end of the 2 year period.

Motion to approve the waiver of street trees failed 4-2: Steward, Carlson, Taylor and Newman voting 'yes'; Bills-Strand and Schwinn voting 'no'; Duvall and Krieser absent.

Carlson moved to deny, seconded by Steward.

Carlson believes that if they are going to subdivide the property, they need to meet the standards.

Motion to deny failed 4-2: Steward, Carlson, Taylor and Newman voting 'yes'; Bills-Strand and Schwinn voting 'no'; Krieser and Duvall absent.

This application is held over for administrative action on March 20, 2002. Public hearing has been closed.

There being no further business, the meeting was adjourned at 3:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 20, 2002.

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